

DEPARTMENT OF HEALTH AND FAMILY SERVICES

Division of Public Health
DPH 40036 (Rev. 04/03)

STATE OF WISCONSIN

Federal Regulation 246.12
s. 253.06 (3) Wis. Stats.
Chapter HFS 149 Wis. Admin. Code

WISCONSIN WIC PROGRAM VENDOR AGREEMENT**SIGN AND RETURN TWO ORIGINAL COPIES TO:**

Department of Health and Family Services
WIC Vendor & Integrity Unit
P O Box 2659
Madison WI 53701-2659

Completion of this form is required for authorization as a WIC vendor pursuant to s. 253.06(3) Wis. Stats. and Chapter HFS 149, Wis. Admin. Code. The submission of this agreement does not guarantee WIC vendor authorization. Stores must meet criteria described in HFS 149. Failure to complete this form will result in denial of your application for vendor authorization.

Name Store is Doing Business As: _____

Street Address: _____

City, State and Zip Code: _____

This agreement is entered into between the Wisconsin Special Supplemental Nutrition Program for Women Infants and Children (WIC) of the Department of Health and Family Services, Division of Public Health, and the above-named establishment, hereinafter referred to as the "vendor." This agreement will be for a period beginning November 1, 2002, and will expire on October 31, 2004, except that for initial authorization, this agreement shall expire one year after the date on which the authorization is granted. The State WIC Office will immediately terminate the agreement if it determines that the vendor has provided false information in connection with its application for authorization. Either party may choose to terminate the agreement for cause after providing advance written notice, of a period of not less than 15 days notice, subject to any applicable appeal rights under Chapter HFS 149, Wis. Admin. Code.

The Vendor Agreement does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply for authorization. If a vendor is disqualified, the WIC Program will terminate the vendor's agreement and the vendor will have to reapply in order to be authorized after the disqualification period is over. In all cases, the vendor's new application will be subject to the vendor selection criteria and any vendor limiting criteria in effect at the time of reapplication.

I. The VENDOR Agrees To:

- A. Comply with the terms of this agreement, federal and state statutes, applicable WIC Program rules and regulations, including but not limited to Chapter HFS 149, Wis. Admin. Code; policies and procedures governing the Program as stated in the application form, the contract agreement, the *WIC Vendor Manual*; Title 7 CFR Part 246 and other applicable statutes, rules, and regulations and further agrees to comply with amendments or updates made during the agreement period.
- B. Comply with the vendor selection criteria throughout the agreement period, including any changes to the criteria.
- C. Process WIC drafts in accordance with the terms of this agreement, applicable WIC Program rules and regulations, including but not limited to Chapter HFS 149, Wis. Admin. Code, policies and procedures as stated in the application form, the contract agreement, the *WIC Vendor Manual*; federal regulations; and other applicable statutes, rules, regulations and amendments or updates. As part of the redemption procedures, the State agency may make price adjustments to the purchase price on food instruments submitted by the vendor for redemption to ensure compliance with the price limitations applicable to the vendor.
- D. The vendor agrees that no otherwise qualified person shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any manner on the basis of age, race, color, handicap, sex, creed, national origin, ancestry, sexual orientation, arrest or conviction status, marital status or religion, under the Program.

- E. The vendor agrees to comply with Title VI of the Civil Rights Act of 1964, as amended in order that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the WIC Program and will immediately take any measure necessary to effectuate this part of the Agreement; and the vendor further agrees to comply with Title VI of the Civil Rights Act of 1964 prohibiting employment discrimination where (1) the primary purpose of the Agreement is to provide employment, or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the WIC Program.
- F. Comply with the nondiscrimination provisions of Parts 15, 15a and 15b of Title 7.
- G. Provide authorized WIC foods, which are fresh and have not exceeded their "sell by", "best if used by" or other date limiting the sale or use of the food item.
- H. Comply with applicable federal, state and local health protection laws and ordinances.
- I. Maintain at all times the required minimum stock of eligible food items in the customer area of the store for purchase by WIC Program participants. "Minimum stock" as used in this agreement shall mean the amount and kinds of food items specified on the *Stock Price Survey* and in the *WIC Vendor Manual*.
- J. Submit an accurately completed *Stock Price Survey* to the State WIC Office or local WIC Project upon request.
- K. Display a sign, sticker, or other evidence of authorization as a WIC vendor, furnished by the WIC Program, in an area visible to WIC participants.
- L. Provide only the authorized supplemental foods and quantities listed on the WIC drafts.
- M. Accept drafts only for the foods approved by the WIC Program.
- N. Accept drafts only from participants, parents or caretakers of infant and child participants, or proxies.
- O. Not provide cash, alcoholic beverages or tobacco products or any other products that are not WIC approved, or coupons or certificates redeemable for cash, alcoholic beverages or tobacco products or non-WIC items, when the provision of these items is contingent upon the redemption of a WIC draft.
- P. Not redeem WIC drafts in whole or in part for cash, rainchecks or other items of value or as a credit for past accounts, nor redeem drafts for any other store.
- Q. Maintain reasonable prices consistent with prices indicated on the *Stock Price Survey* and charged by other vendors in the project service area in which the vendor is located.
- R. Charge WIC participants, parents or caretakers of infant and child participants, or proxies the same price or less than the price charged to other customers for the quantities of WIC approved food items specified on the WIC drafts.
- S. Offer WIC participants, parents or caretakers of infant and child participants, or proxies the same courtesies as offered to other customers.
- T. Provide supplemental foods obtained with WIC drafts free of charge to participants, parents or caretakers of infant or child participants, or proxies for authorized foods obtained with food instruments.
- U. Have all approved WIC foods plainly marked with the current shelf prices and/or have the prices posted on the shelves where the foods are offered for sale.
- V. Have a current list of approved WIC foods readily accessible to all cashiers.

- W. Ensure that the purchase price is entered in ink for the WIC authorized foods actually purchased before the draft is signed and that the signature of the participant, caretaker, or proxy is obtained in the presence of the cashier.
- X. Attend or require designee to attend annual training in WIC Program requirements and other training sessions when required to do so. Inform and train cashiers or other staff on Program requirements.
- Y. Be fully responsible for the acts of agents, owners, officers, managers and employees in the redemption of WIC drafts and the provision of supplemental foods who commit violations.
- Z. Not contact, question, or seek restitution from participants, parents, caretakers, or proxies for WIC drafts not paid or partially paid by the WIC Program.
- AA. Not collect sales tax on WIC food purchases.
- BB. Not provide refunds or permit exchanges for authorized supplemental foods obtained with WIC drafts, except for exchanges of an identical authorized supplemental food item when the original item is defective, spoiled or has exceeded its "sell by" "best if used by" or other date limiting the sale or use of the food item. Identical authorized supplemental food item means the exact brand and size as the original item obtained and returned by the participant.
- CC. Notify the local WIC Project or State WIC Office of misuse (attempted or actual) of WIC Program drafts by participants.
- DD. Not accept WIC food drafts before the first day to use or after the last day to use as stated on the WIC draft.
- EE. Deposit WIC food drafts for payment within sixty (60) days of the first day to use.
- FF. Allow authorized personnel to monitor the store for compliance with WIC rules and provide access to food drafts available in the grocery store or pharmacy at the time of a site visit.
- GG. Pay any claim assessed by the State WIC Office when the State has established a claim in the amount of full purchase price of each food instrument that contained a vendor overcharge or other error, which has not been justified or corrected. In collecting a claim, the State WIC Office may offset the claim against current and subsequent amounts to be paid to the vendor and may sanction the vendor for overcharges or other errors in accordance with Section III.
- HH. Submit a refund or adequate justification for overcharges to the State WIC Office within thirty (30) days of written notification.
- II. Maintain for a period of three years and provide access to paper or electronic records used for state or federal tax reporting purposes and other Program records including: inventory records showing all purchases, wholesale and retail, in the form of invoices that identify the quantity and prices of specific WIC foods, books of account, shelf price records and other pertinent records.
- JJ. Allow authorized personnel to audit the vendor's inventory and records as a monitoring procedure to assure that the vendor has only received payment for the quantity of WIC foods authorized on redeemed drafts.
- KK. Keep on file in the above store, a copy of the *WIC Vendor Manual*, the approved application and stock price survey, and updates and amendments received from the state WIC office.
- LL. Ensure that the WIC vendor stamp is used only for the purpose and in the manner authorized by the terms of this agreement, state and federal WIC Program rules as stated in regulations, policies and applicable laws.
- MM. Not duplicate the vendor stamp.

NN. Assume full responsibility for any unauthorized use of the WIC vendor stamp and immediately report the loss or theft of this stamp to the State WIC Office.

OO. Notify the State WIC Office or local WIC project and return the WIC vendor stamp upon termination of this agreement due to voluntary termination, change of ownership, or when the store ceases operation and to return the stamp following suspension, termination or disqualification from the WIC Program.

PP. When authorized as a pharmacy, order infant formulas at the request of WIC participants or the local WIC project. Pharmacies agree to have an established procedure with a distributor or manufacturer which would enable the pharmacy to supply infant formula within a reasonable time when requested by a WIC participant or the local WIC project.

II. The WIC PROGRAM Agrees To:

- A. Make payment to the vendor for actual retail costs for drafts redeemed in compliance with the conditions contained in Section I above, Chapter HFS 149, Wis. Admin. Code, and the *WIC Vendor Manual*. Drafts deposited must be within the maximum dollar value established for the draft type based on the statewide redemption value the preceding month and the reject percentage applied to the draft type.
- B. Delay payment or establish a claim when the vendor has committed a vendor violation that affects the payment to the vendor, but provide the vendor with an opportunity to justify or correct a vendor overcharge or other error.
- C. Provide the vendor with instructions for redeeming WIC drafts and for obtaining assistance.
- D. Provide a WIC vendor stamp for use in redeeming WIC Program drafts.
- E. Provide annual training for the vendor.
- F. Not discriminate on the basis of race, color, national origin, sex, age, or disability as prohibited by Federal law and U.S. Department of Agriculture policy.

NOTE: To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). "USDA is an equal opportunity provider and employer."

III. Sanctions for Abuse

- A. Violations of 7 CFR Part 246 require mandatory sanctions as follows:
 - 1. A vendor shall be permanently disqualified when convicted of buying or selling a WIC draft for cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802. A vendor will not receive compensation for lost revenues for this offense.
 - 2. A vendor shall be disqualified for six years for one incidence of buying or selling a WIC draft for cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802.
 - 3. A vendor shall be disqualified for three years for any of the following:
 - (a) One incidence of the sale of alcohol, alcoholic beverages or tobacco products in exchange for a WIC draft; or
 - (b) A pattern of claiming reimbursement for the sale of an amount of a specific WIC food item which exceeds the store's documented inventory of that WIC food item for a specific period of time; or
 - (c) A pattern of charging participants more for WIC food than non-WIC customers or charging participants more than the current shelf or contract price; or
 - (d) A pattern of receiving, transacting and/or redeeming WIC drafts outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person; or
 - (e) A pattern of charging for WIC food not received by the participant; or
 - (f) A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for WIC drafts.

4. A vendor shall be disqualified for one year for a pattern of providing an unauthorized food item in exchange for a WIC draft, including charging for WIC food provided in excess of those listed on the draft.
5. A vendor who has been disqualified from the Food Stamp Program shall be disqualified from the WIC Program. The disqualification from WIC shall be for the same length of time as the disqualification from the Food Stamp Program, and may begin at a later date than the Food Stamp disqualification. Disqualification as a result of a disqualification from the Food Stamp Program shall not be subject to administrative or judicial review.

A vendor who has been assessed a civil money penalty for hardship in the Food Stamp Program may be disqualified from the WIC Program. The length of disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program.

Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. Such disqualification, determined by the Food Stamp Program, may not be subject to administrative or judicial review under the Food Stamp Program.

6. When a vendor who previously has been assessed a sanction for any of the offenses in paragraphs (k)(1)(ii) through (k)(1)(iv), receives another sanction for any of these offenses, second and subsequent sanctions are doubled.
7. The disqualification period for offenses in current administrative rules not listed in 1. through 5. has been reduced to one year per investigation, in concurrence with federal regulations.
8. Voluntary withdrawal of a vendor and nonrenewal of the vendor agreement as alternatives to disqualification for offenses cannot be accepted, and will be entered on the record.
9. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency shall impose a civil money penalty in lieu of disqualification. However, a civil money penalty will not be allowed in lieu of disqualification for third or subsequent sanctions.

If a vendor does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the State WIC office shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed.

10. A vendor who has committed multiple offenses during an investigation shall be disqualified for the period corresponding to the most serious offense.
- B. Violations as outlined in the Chapter HFS 149, Wis. Admin. Code and summarized in the *WIC Vendor Manual* may result in suspension, termination or disqualification following provision to the vendor of reasonable notice and opportunity for a hearing.
 - C. Violations of Chapter 49.127, Wis. Stats. and Conditions of Eligibility in Chapter HFS 149, Wis. Admin. Code, may result in suspension, termination or disqualification following provision to the vendor of reasonable notice and opportunity for a hearing when there is evidence of non-compliance.
 - D. Violations of Sec. 253.06, Wis. Stats., may result in the assessment of a forfeiture of not less than \$10 nor more than \$1000, recoupment and an enforcement assessment in the amount of 50% of the forfeiture or recoupment imposed following provision to the vendor of reasonable notice and opportunity for a hearing. The State WIC Office shall send a notice to the vendor which includes the amount of the forfeiture assessed, the amount of recoupment assessed, the amount of the enforcement assessment, the violation and the law or rule alleged to have been violated.
 - E. The State WIC Office will determine the action to be taken whenever vendor abuse, fraud, or administrative violations are discovered. If the State WIC Office determines that the vendor has violated applicable rules or regulations, the vendor will be disqualified from participation in the WIC Program for a period of no more than the maximum period allowed under Title 7 CFR Part 246. Vendors who are disqualified must apply for authorization and meet all current requirements for authorization.

- F. The provision of sanctions for Program abuse to be imposed on vendors shall not be construed as excluding or replacing any criminal or civil sanctions or other remedies that may be applicable under any federal and state statute or local ordinance. A vendor who commits fraud or abuse of the Program is liable to prosecution under applicable federal, state or local laws, as well as action under Chapter HFS 149, Wis. Admin. Code. Under Section 12 (g) of the National School Lunch (NSL) Act, those who have willfully misapplied, stolen or fraudulently obtained WIC funds shall be subject to a fine of not more than \$25,000 or imprisonment of not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year or both.
- G. If an individual, partnership, corporation or other business structure is convicted of a criminal offense involving WIC, food stamps, or any other Program operated by the Food and Nutrition Service of the U.S. Department of Agriculture, all grocery stores and pharmacies wholly or partially owned or managed by the convicted individual, partnership, corporation or other business structure, or by a partner of a convicted partnership or an officer, director or majority stockholder of a convicted corporation, shall be terminated from WIC vendor authorization and shall be disqualified from future WIC vendor authorization for the maximum disqualification period allowed by 7 CFR 246.12 (k)(1). This termination and disqualification shall occur whether or not the grocery store or pharmacy was the location at which the crime occurred, and regardless of any penalty imposed upon the convicted party by the court of conviction.
- H. The State WIC Program will refer vendors who abuse the Program to federal, state and local authorities for prosecution under applicable statutes, where appropriate.

IV. Appeal Procedure

- A. The State WIC Office shall begin actions described under Section III by serving upon the vendor written notice of the action, the cause and effective date by certified mail or by personal delivery. The State WIC Office may postpone adverse action in cases where participants would be unduly inconvenienced.
- B. A vendor desiring to contest a State WIC Office action under section III may request a hearing. The request shall be in writing and shall:
 - 1. Be submitted to the Department of Administration's Division of Hearings and Appeals; and
 - 2. Be received by the Division of Hearings and Appeals within 15 days after the vendor's receipt of State WIC Office notification of the action.
- C. Expiration of a vendor's authorization at the end of a contract period and the State WIC Office's determination regarding participant access are not subject to appeal.
- D. Appeal procedures are available upon request and applicable appeal procedures will be included with an adverse action subject to administrative review.

V. General Conditions

- A. The vendor shall immediately provide written notification of any change in vendor ownership, store location, or cessation of operations. WIC business shall cease and WIC drafts shall be deposited. This agreement shall become null and void on the date a change of ownership occurs.
- B. The State WIC Office will terminate the agreement if it identifies a conflict of interest, as defined by applicable State laws, regulations and policies, between the vendor and the State WIC Office or its local projects.
- C. The State WIC Office reserves the right to amend this agreement upon thirty (30) days' notice.
- D. Neither party has any obligation to renew this agreement.

This agreement, rules and regulations referenced within, and the *WIC Vendor Manual* contain all terms and conditions agreed upon by the parties. The vendor agrees that the vendor has read, understands, and will comply with the terms in this agreement. The vendor also agrees to comply with conditions stated in Title 7 CFR Part 246, Chapter HFS 149, Wis. Admin. Code, the *WIC Vendor Manual*, and other applicable statutes, rules, and regulations and any amendments or updates. The undersigned represents that he/she is either the sole proprietor or has the legal authority to obligate the vendor.

For initial applicants, this Agreement is effective when training is completed and the *WIC Vendor Manual* and authorized WIC vendor stamp are provided. For vendors applying for reauthorization, this Agreement is effective on November 1, 2002 or the date signed by the Department, whichever is later.

(Print) Name and Title of Vendor
or Person with Legal Authority to Obligate Vendor

SIGNATURE – Vendor / Person with Legal Authority to
Obligate Vendor

Date Signed

The undersigned represents the Wisconsin WIC Program and has authority to sign this agreement on behalf of said agency:

SIGNATURE - Division of Public Health, WIC Program

Date Signed